IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3198 OF 2003
IN
SUIT NO.3311 OF 1995

Shree Jalaram Traders ..Plaintiffs

Vs.

Maya Traders & Ors. ..Defendants

None for the plaintiffs

Mr.Prasad Pathare i/b Rajeev Matkar for the defendant no.1 and 2

CORAM : S.U.KAMDAR, J
DATED : 1ST MARCH, 2006

P.C.:

1. The present motion is taken out for setting aside an ex-parte decree dt.6.10.03. The only ground raised in para 3 of the affidavit that before the ex-parte decree was passed pursuant to the discussions had by the plaintiff and the advocate of the plaintiff with defendant no.2, the matter was settled and the defendants paid the sum of Rs.1,41,947/- which is a suit claim and that the plaintiff promised that they will withdraw the suit and will not prosecute the suit. However, contrary to the said arrangement suit has been prosecuted and decree was obtained.

2. I am of the view that after the defendants have already paid the amount and the said defence can be raised as and when decree is executed and if the defendants satisfies the court that amount is already paid then the decree to be marked 'satisfied'. In the light of the fact that the defendants have already paid the amount to the plaintiffs, question of setting aside the decree and permitting the defendants to contest the same cannot and does not arise. Motion disposed of accordingly with aforesaid clarification. No order as to costs.